

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte: MARK LANDESMANN

Application No. 09/888,439

MAILED

DEC 10 2007

U.S. PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS
AND INTERFERENCES

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was received at the Board of Patent Appeals and Interferences on December 5, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

APPEAL BRIEF

A review of the file indicates on April 20, 2006, Appellants filed an Appeal Brief in response to a Final Rejection mailed May 20, 2005. The Appeal Brief is not in compliance with 37 CFR § 41.37(c) effective September 13, 2004. 37 CFR § 41.37(c)(viii) states:

(viii) *Claims appendix.*< An appendix containing a copy of the claims involved in the appeal.

It should be noted that claim 347 is missing from the "Claims Appendix" section of the brief.

EXAMINER'S ANSWER

An examination of the application reveals that the Final Rejection mailed May 20, 2005 and the Examiner's Answer mailed July 17, 2006, failed to discuss claims 65, 155, 255, 283, 307, 332, and 356 in the statement of the grounds of rejection. The statement of rejections are listed as follows:

1. Claims 1, 10-13, 47-49, 51-52, 64, 94, 100-103, 137-139, 141-142, 154 and 204, 207-230, 232-238, 246, 250; 259-282, 284-290, 298, 302; 308-331, 333-339, 347, and 351 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldhaber, US 5855008, hereinafter Goldhaber, in view Weinblatt, US 5515270, hereinafter Weinblatt, and further in view of Day, US 6484146, hereinafter Day.
2. Claims 68 and 158 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldhaber in view of Weinblatt and Day and further in view of Dedrich, US 5717923, hereinafter Dedrich.
3. Claims 206, 231, 252-254, 256-258, 304-306, 308-310, 353-355, 357-359 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goldhaber in view of Weinblatt and Day and further in view of admitted art.

Accordingly, the Examiner's Answer does not contain the "Grounds of Rejected to be Reviewed on Appeal" heading as required by 37 CFR § 41.39.
Correction is required.

Evidence Relied Upon

In the Examiner's Answer mailed July 17, 2006, the Examiner rejected claims 68 and 158 under 35 U.S.C. 103(a) as being unpatentable over Goldhaber in view of Weinblatt and Day and further in view of Dedrich, US 5717923, hereinafter Dedrich. It is noted that the Dedrich reference has not been listed in the "Evidence Relied Upon" section.

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In accordance with MPEP § 1207.02, the “Evidence Relied Upon” (section 8) should include:

(8) Evidence Relied Upon

A listing of evidence relied on (e.g., patents, publications, admitted prior art), and in the case of non-patent references, the relevant page or pages.

Correction of the record is required, the Examiner may issue a PTOL-90 to identify the evidence relied upon in the rejection of the appealed claim.

INFORMATION DISCLOSURE STATEMENT

Appellant filed Information Disclosure Statements (IDS) dated: July 17, 2007 and October 23, 2007. There is no indication on the record that the Examiner has signed the above Information Disclosure Statements. MPEP § 609 requires the Examiner to consider any Information Disclosure Statement filed by Applicant if timely submitted. A written communication notifying Appellant of the Examiner’s consideration of the above Information Disclosure Statement is required.

CONCLUSION

Accordingly, it is

ORDERED that the application is returned to the examiner to:

- 1) hold the Appeal Brief filed April 20, 2006 defective;
- 2) notify Appellant to submit a “paper” which corrects the Claims Appendix under 37 § 41.37(c)(1)(viii);
- 3) acknowledge and consider any “paper” that may be submitted by Appellant in response to the Non-Compliance to correct the Appeal Brief;

- 4) issue and mail a revised Examiner's Answer clarifying the rejection of claims 65, 155, 255, 283, 307, 332, and 356, correcting the Grounds of Rejection to be Reviewed on Appeal section and having the missing reference listed under the Evidence Relied Upon section;
- 5) acknowledge and consider the IDS's noted above; and
- 6) for such further action as may be appropriate.

BOARD OF PATENT APPEALS
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